IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

CRL.A.No. 250 of 1998(A)

CC.202/1998 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR
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APPELLANT/COMPLAINANT:

M/S.SUDARSAN TRADING COMPANY LTD.,
A COMPANY INCORPORATED UNDER THE INDIAN COMPANIES ACT, HAVING REGISTERED OFFICE AT SUDARSAN BUILDING, CALICUT, REP. BY ITS SENIOR EXECUTIVE D.M.RAJAGOPAL.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS/ACCUSED:

1.M/S.FATHIMA TILES, MARATHAKKARA, OLLUR, TRICHUR DISTRICT.

2.C.P.JOSE, PARTNER, M/S.FATHIMA TILES, MARATHAKKARA, OLLUR, TRICHUR DISTRICT.

BY ADV. SRI.M.UNNIKRISHNA MENON
SRI.C.CHANDRASEKHARAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.250 OF 1998 (A)

Dated this the 14th day of March, 2007

JUDGMENT

Appellant is a company registered under the Indian Companies Act. According to the appellant, it is the owner of trade mark No.2763 issued by the Deputy Registrar of Trade Marks, Madras. The registered trade mark is “open umbrella”. Appellant got information that during 1981, respondents are using the very same trade marks in its products. Therefore filed a complaint under Sections 78 and 79 of Trade and Merchandise Act, 1958. Trial court though found that appellant obtained registered trade mark of 'open umbrella' also found that respondents were using the same trade mark acquitted the respondents on the ground that the respondents also got the above trade mark registered under Ext.D1 order. The Assistant Registrar found that the respondents were using the open umbrella trade mark from 1976 onwards and both can concurrently use the same. Appellant filed a review petition. That was rejected by Ext.D4 order and the trial court found that

in view of Exts.D1 and D4 orders and findings of the registrar that respondents were using trade mark open umbrella from 1976, bona fide and concurrent use was allowed under Section 12 (3) of the Act, there is no violation of Sections 77, 78 and 79 of the Act. In fact respondents are entitled to the benefit of Section 84 of the Act as at the relevant time Exts.D1 and D4 orders were in force. I see no merit in this appeal and hence this appeal against acquittal is dismissed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.250 OF 1998

JUDGMENT

14th March, 2007